



**DGMH – Director General -Medical  
and Health Services, Uttar Pradesh**



## **Request for Proposal Document PART II – Draft Contract Agreement**

**Selection of CT Scan Service Providers - (CT-SP-1) for 5  
Clusters Covering 38 Districts of Uttar Pradesh (Category 1)**

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**[•], 2016**

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**PROVISIONING / PROCUREMENT, COMMISSIONING, OPERATING AND  
MAINTENANCE AGREEMENT**

This Provisioning / Procurement, Commissioning, Operating & Maintenance Agreement (hereinafter referred to as "**Agreement**") is made and entered into on the [●]<sup>1</sup> day of [month], [year] by and between:

Director General - Medical and Health Services, Uttar Pradesh (DGMH), established under the [●], represented by its [●] and having its principal offices at [●] (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the First Part;

AND

[●], a [●] incorporated under the provisions of the [●]<sup>2</sup> and having its registered office at [●], (hereinafter referred to as the "**Service Provider**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Second Part.

**WHEREAS**

- A. The Authority had invited proposals vide Request for Proposal Document bearing No. [●] dated [●] (the "**Bid Notice**") from Service Providers for provisioning of Space, CT Scanner and associated equipment, Installation, Commissioning and Maintenance of CT Scan facility including CT Scanner and all associated equipment, Operations and Management of CT Scan Services with skilled and unskilled manpower complying to AERB requirements for the locations in the State of Uttar Pradesh, specified in **Schedule A** of this Agreement;
- B. After evaluation of the Bid(s) received, the Authority had accepted the bid of the Service Provider and issued a letter of acceptance No. [●] dated [●] (hereinafter called the "**LOA**") to the Service Provider requiring, inter alia, the execution of this Agreement;
- C. The Service Provider has agreed to undertake and perform its obligations with respect to the Project, subject to and on the terms and conditions set forth hereinafter.
- D. The Service Provider has agreed to meet the requirements and terms and conditions of the Scope of the Project (Article 2) for the following Cluster(s) that it has bid for and has been successfully selected by the Authority as per the laid down bidding process in the RFP document.

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<sup>1</sup> All project-specific provisions in this document have been enclosed in square parenthesis and may be modified suitably, as necessary

<sup>2</sup> Reference may be made alternatively to the type of company/society/trust which is setting up the Project

<b>Cluster</b>	<b>Name of Districts</b>	<b>Indicate as YES / NO on the Cluster for which the Agreement is being signed</b>
Cluster 1	Mathura, Aligarh, Etah, Hathras, Kasganj, Auraiya, Farrukhabad	
Cluster 2	Badaun, Baghpat, Gautam Budh Nagar (Noida), Hapur, Amroha, Bijnor, Rampur, Sambhal, Muzzaffarnagar, Shamli	
Cluster 3	Kaushambi, Chitrakoot, Hamirpur, Mahoba, Bhadohi, Chandauli, Ghazipur	
Cluster 4	Mau, Sant Kabir Nagar, Siddharthnagar, Ambedkar Nagar, Amethi, Deoria, Kushinagar, Maharajganj	
Cluster 5	Pilibhit, Shahjahanpur, Balrampur, Shravasti, Lakhimpur Kheri, Sitapur	

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE 1: DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“Affected Party” shall have the meaning set forth in Clause 17.1;

“Agreement” means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Applicable Laws” means all laws, brought into force and effect by Government of India or the State Government of Uttar Pradesh including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“Applicable Permits” means all ‘contractually required and need based’ clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the provision of Services at the CT Scan facilities in specified locations, during the subsistence of this Agreement;

“Appointed Date” means the date on which the Conditions Precedent of both the Parties have been met and shall be deemed to be the date of commencement of the Term with respect to the concerned Facility/Location;

“Arbitration Act” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“Associate” or “Affiliate” means, in relation to either Party, a person who is under significant influence of such Party (as used in this definition, the expression “significant influence” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the total share capital of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“Authority” means the Contracting Authority, which is DGMH – Director General Medical and Health Services, Uttar Pradesh.

“Authority Default” shall have the meaning set forth in Clause 19.2.1;

“Authority Representative” means such person or persons as may be authorised in writing

by the Authority to act on its behalf under this Agreement and shall include any person or persons having Authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“Bank” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders (if any), but does not include a bank in which any Senior Lender has an interest;

“Bank Rate” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of Section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“Bid” means the documents in their entirety comprised in the bid submitted by the Service Provider in response to the request for proposal (RFP) and the provisions thereof;

“Bid Security” means the security provided by the Service Provider to the Authority along with the Bid in a sum of Rs. [●] Lakh (Rupees [●] Lakh), in accordance with the Bid documents, and which is to remain in force until substituted by the Performance Security;

“Company” means the Company acting as the Service Provider under this Agreement;

“Commissioning Date” shall mean the date on which the Service Provider has completed the installation, commissioning and testing of the Equipment at the concerned Facility/Location, to the satisfaction of the Authority;

“Service Provider” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Service Provider Default” shall have the meaning set forth in Clause 19.1.1;

“Conditions Precedent” shall have the meaning set forth in Clause 4.1.1;

“Contingency” means a condition or situation that is likely to endanger the individuals within the territorial jurisdiction of the State of Uttar Pradesh;

“Contractor” means the person or persons, as the case may be, with whom the Service Provider has entered into any contract or any other agreement or contract for provision of the Services or matters incidental thereto, for and on behalf of the Service Provider. The Service Provider shall and will remain solely responsible to the Authority for the overall obligations and liabilities of the Contractor engaged under this Agreement and/or the respective “Project Agreements”

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:-

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Service Provider requires any reasonable action by the Service Provider that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval;

“Damages” shall have the meaning set forth in Sub-clause (v) of Clause 1.2.1;

“Defect(s)” means any defect or deficiency, whether latent or patent in the design, engineering, manufacturing, workmanship or material used in any Equipment or any failure of the Equipment to comply in all respects with the Agreement including Specifications and Standards, Applicable Laws, Applicable Permits, Performance Parameters and Good Industry Practice

“Dispute” shall have the meaning set forth in Clause 25.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 25;

“Document” or “Documentation” means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“Equipment” means the Equipment(s) listed in **Article 2**, which are to be procured, installed, commissioned, tested, operated and maintained by the Service Provider in accordance with the terms of this Agreement

“Encumbrances” means, in relation to the Equipment, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Equipment, where applicable herein;

“Financing Agreements” means the agreements executed by the Service Provider, if any, with respect to financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the costs to be incurred on the Project;

“Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Clause 17.1;

“GOI” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced Service Provider engaged in the same type of services as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Service Provider in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government Instrumentality” means any department, division or sub-division of the Government or the Government of India and includes any commission, board, Government, agency or municipal and other local Government or statutory body including Panchayat under the control of the Government or the Government of India, as the case may be, and having jurisdiction over all or any part of the Equipment or the performance of all or any of the services or obligations of the Service Provider under or pursuant to this Agreement;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 23;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 23;

“Indirect Political Event” shall have the meaning set forth in Clause 17.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Service Provider pursuant to Article 15, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;

“Inspection Report” shall have the meaning set forth in Clause 12.2;

“LOA” or “Letter of Acceptance” means the letter of acceptance referred to in Recital (D);

“Lenders’ Representative” means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“Maintenance Requirements” shall have the meaning set forth in Article 10 and Schedule C;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“Non-Political Event” shall have the meaning set forth in Clause 17.2;

“Maintenance” means the maintenance of the Equipment and includes all matters connected with or incidental to the provision of services and facilities in accordance with the provisions of this Agreement;

“NTP” means the ‘Notice to Proceed’ issued by the Authority to the Service Provider under Clause 4.1.3

“Panel of Chartered Accountants” shall have the meaning set forth in Clause 16.2.1;

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the parties to this Agreement individually;

“Performance Security” shall have the meaning set forth in Clause 9.1;

“Performance Parameters” shall mean the parameters set forth in **Schedule C**;

“Political Event” shall have the meaning set forth in Clause 17.4;

“Monthly Fee/Payment” or “Fee” shall have the meaning set forth in Clause 13.1

“Project” means the financing, procurement, transportation, installation, testing, commissioning, operating and maintenance of the Equipment at the Facilities in accordance with the provisions of this Agreement, and includes all works, services and equipment



relating to or in respect of the Scope of the Project;

“Project Agreements” means this Agreement, the Financing Agreements and any other agreements or contracts that may be entered into by the Service Provider with any person in connection with matters relating to, arising out of or incidental to the Project;

“Project Assets” means (a) contractually required and need based rights of access to the District Hospital; (b) Facility Space, Equipment, tangible assets such as computer, fittings, communication systems; (c) assets such as software and licence(s), and Intellectual Properties; (d) all rights of the Service Provider under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Equipment;

“Premises/Locations” mean the Facilities that would set up as per locations defined and detailed in Schedule A

“Re.,” “Rs.” or “Rupees” or “Indian Rupees” means the lawful currency of the Republic of India;

“Safety Consultant” shall have the meaning set forth in Clause 11.1.2;

“Safety Requirements” shall have the meaning set forth in Clause 11.1.1;

“Scope of the Project” shall have the meaning set forth in Clause 2.1;

“Senior Lenders” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Service Provider under any of the Financing Agreements for meeting all or any part of the costs to be incurred on the Project and who hold pari passu charge on the assets, rights, title and interests of the Service Provider;

“Services” means the Services to be provided by the Service Provider in accordance with the terms and conditions of the Agreement;

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Equipment, as set forth in any **Schedule of this Agreement** and any modifications thereof, or additions thereto, as included in the design and engineering for the Equipment submitted by the Service Provider to, and expressly approved by, the Authority;

“State” means the State of Uttar Pradesh and “State Government” means the government of that State;

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Service Provider under the provisions of the Companies Act, 2013, including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 16.2.1;

“Suspension” shall have the meaning set forth in Clause 18.1;

“Taxes” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part

of the Equipment charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“Bid Notice” shall have the meaning set forth in Recital ‘C’;

“Term” means the period as specified under Article 3 (or less in case of early termination by a Termination Notice in accordance with this Agreement) commencing from the Appointed Date;

“Termination” means the expiry or earlier termination of this Agreement hereunder;

“Termination Notice” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

## 1.2 Interpretation

### 1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to day shall mean a reference to a calendar day;
- (h) references to a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in Lucknow, Uttar Pradesh are generally open for business;
- (i) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

- (j) references to any date, period or project milestone shall mean and include such date, period or project milestone as may be extended pursuant to this Agreement;
- (k) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (l) the words importing singular shall include plural and vice versa;
- (m) references to any gender shall include the other and the neutral gender;
- (n) “lakh” means a hundred thousand (1,00,000) and “crore” means ten million (10,000,000);
- (o) “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (p) references to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (q) any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (r) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, as the case may be, in this behalf and not otherwise;
- (s) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (t) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
- (u) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled

to receive the same and are not by way of penalty (the “Damages”).

- 1.2.2 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.3 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.
- 1.3 **Measurements and arithmetic conventions**  
All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.
- 1.4 **Priority of agreements and errors/discrepancies**
- 1.4.1 This agreement, and all other agreements and documents forming part of this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this agreement, the priority of this agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:
- (a) this agreement; and
  - (b) all other agreements and documents forming part hereof;
- i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) above.
- 1.4.2 Subject to Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
  - (b) between the Clauses of this agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
  - (c) between any value written in numerals and that in words, the latter shall prevail.

## ARTICLE 2: SCOPE OF THE PROJECT

### 2.1 Project Overview

The Service Provider will provide the services as per the Clinical Establishment Act Standards for **Medical Imaging Services (Diagnostic Centers) - Standard No. CEA/MIS-028 as applicable to CT Scan Services. Standard Operating Procedures will be formulated in line with the standard.**

The Service Provider shall be responsible for operationalization of 16 slice Computed Tomography (CT) Scan facility at District level to offer CT scan services to the patients referred by District Hospital. Ownership status of all movable assets created from the investments made by the Service Provider shall remain with the Service Provider. The following needs to be delivered as per project requirements:

**Provisioning of Space, CT Scanner and associated equipment, Installation, commissioning and maintenance of CT Scan facility including CT Scanner and all associated equipment, Operations and Management of CT Scan Services with skilled and unskilled manpower complying to AERB requirements and as per details of locations in Schedule A of this Agreement**

#### 2.1.1. Scope of Work

The Service Provider shall provide required CT Scan facility infrastructure and services at one or more of the 5 (five) specified Clusters in Uttar Pradesh. Cluster details are provided in the table below:

Cluster	Names of Districts
<b>Cluster 1</b>	Mathura, Aligarh, Etah, Hathras, Kasganj, Auraiya, Farrukhabad
<b>Cluster 2</b>	Badaun, Baghpat, Gautam Budh Nagar (Noida), Hapur, Amroha, Bijnor, Rampur, Sambhal, Muzzaffarnagar, Shamli
<b>Cluster 3</b>	Kaushambi, Chitrakoot, Hamirpur, Mahoba, Bhadohi, Chandauli, Ghazipur
<b>Cluster 4</b>	Mau, Sant Kabir Nagar, Siddharthnagar, Ambedkar Nagar, Amethi, Deoria, Kushinagar, Maharajganj
<b>Cluster 5</b>	Pilibhit, Shahjahanpur, Balrampur, Shravasti, Lakhimpur Kheri, Sitapur

The Service Provider should identify on its own the feasible locations for CT Scan facilities in the mentioned Cluster(s), in case not already operating such a facility which complies with requirements laid down under this Agreement.

The obligations of the Service Provider under this Contract shall include following service activities and commitments. The details of locations and type is given in **Schedule A**.

1. The Service Provider arranges for a space for the CT Scan Center(s) at its own cost within the Municipality Limits and within a distance of 3 Km from corresponding District Hospital. The Service Provider shall make complete arrangements (including procurement of 16 slice CT Scan machine) with compliance of AERB and Medical Imaging Standard No. CEA/ MIS – 028 to make the CT Scan Center operational (declaration for same needs to be submitted).

- 1.1. The CT Scan Machine should not be more than 3-years-old or refurbished. The Service Provider should submit the following documents along with the bid: An Installation certificate of existing CT Scanner or Declaration that a new CT Scanner will be installed.

- 1.2. A declaration that the AERB Certification will be done prior to start of the services for new centers.
2. Alternatively, the Service Provider can tie up with an already existing CT scan facility near the hospital and make it operational as per the specifications of the machine (16 slice CT scan) and terms & conditions laid down in this contract.
3. CT Scan Services will be provided Monday through Saturday, from 8 am to 6 pm, except on public holidays. In case of critical emergencies, the Service Provider shall ensure CT Scan Services at respective facility within 2 hours on call basis.
4. The Service Provider shall not be entitled to levy any charge on the patients. The services shall be provided completely cashless to all patients referred as per defined protocol.
5. Copy of Reports and Scan Images
  - 5.1 The Service Provider shall submit the hard and soft copies of the report and images to the District Hospital within the stipulated time mentioned below after successful uploading of image within 45 minutes (which would be simultaneously viewed at the District Hospital as well as in the main console of the CT Scan Center):
    - a. All Head injuries, trauma cases and cases declared as urgent by the referring Hospital within 2 hours.
    - b. All routine scans from 8 a.m. to 6 p.m. within 6 hours
  - 5.2 On a case by case basis, in order to address delays in submission of reports due to Internet Connectivity Issues, an additional margin of 10% might be provided for cases of such delays up to a maximum of 72 hours in a particular month.
  - 5.3 Tele Radiology is allowed but the Service Provider will have to ensure availability of human resources as per Clause 2.1.1.7 placed below (Point #7)
  - 5.4 The Service Provider shall be responsible for accuracy of test reports. Service Provider will be liable for any casualty due to wrong diagnosis of the patient basis inaccuracy in the test report of the patient.
6. The Service Provider shall also ensure at its own cost, an IT enabled work station at the radiology department of the District Hospitals where the images and soft copy of the report of the patient should reach within stipulated time. The Service Provider also needs to record patient details, test results and any defined MIS reports, in the CT Scan Monitoring System, on real time basis.
7. The human resources for delivering the services at the CT Scan facilities should be as described under Schedule B.
8. The Service Provider shall maintain CT Scanner and its associated Equipment at its own cost.
9. The Service Provider shall be able to carry out following list of Investigations/ procedures (at least) at their proposed facility:
  - I. CT Head - Without Contrast

- II. CT Head - with Contrast (+/- CT angiography)
- III. C. T. Chest - without contrast (for lungs)
- IV. C. T. Scan Lower Abdomen (Incl. Pelvis) With Contrast
- V. C. T. Scan Lower Abdomen (Incl. Pelvis) Without Contrast
- VI. C. T. Scan Whole Abdomen without Contrast
- VII. C. T. Scan Whole Abdomen with Contrast
- VIII. Triple Phase CT abdomen
- IX. CT angiography abdomen/ Chest
- X. CT Enteroclysis
- XI. C. T. Scan Neck - Without Contrast
- XII. C. T. Scan Neck - With Contrast
- XIII. C. T. Scan Orbits - Without Contrast
- XIV. C. T. Scan Orbits - With Contrast
- XV. C. T. Scan of Para Nasal Sinuses - Without Contrast
- XVI. C. T. Scan of Para Nasal Sinuses - With Contrast
- XVII. C. T. Spine (Cervical, Dorsal, Lumbar, Sacral) - without contrast
- XXIII. CT Temporal bone - without contrast
- XIX. CT - Dental
- XX. C. T. Scan Limbs - Without Contrast
- XXI. C. T. Scan Limbs - With Contrast including CT angiography
- XXII. C.T. Guided intervention - FNAC
- XXIII. C.T. Guided Trucut Biopsy
- XXIV. C. T. Guided intervention - percutaneous catheter drainage / tube placement.

Also, the Service Provider shall constantly include the revised list of Investigations/ procedures in line with CGHS Delhi-NCR Circle list of investigations. (<http://msotransparent.nic.in/writereaddata/cghsdata/mainlinkfile/File979.pdf>)

The following tests can be scheduled once in a week:

- XXV. C.T. Guided intervention - FNAC
- XXVI. C.T. Guided Trucut Biopsy
- XXVII. C. T. Guided intervention – percutaneous catheter drainage / tube placement.

10. The Service Provider will have to equip their centre with lifesaving and monitoring equipment like de-fibrillators, monitors, ventilators etc. in compliance with Medical Imaging Standard No. CEA/ MIS – 028.

### 2.3 Change of Scope

2.3.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, either require the provision of additional medical equipment and/or services with respect to the whole project at large or any particular Cluster/Facility, which is not included in the Scope of the Project under this Agreement or decide to delete any service and/or medical equipment from the Scope with respect to the whole project at large or any particular Cluster/Facility (“Change of Scope”).

2.3.2 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Service Provider a notice specifying in reasonable detail the goods and/or services contemplated thereunder (the “**Change of Scope Notice**”).

- 2.3.3 In the event that a Change of Scope Notice is issued, the Service Provider shall communicate to the Authority the resultant impact (increase or decrease) on the “Monthly Fee/Payment” or “Fee” shall have the meaning set forth in Clause 13.1 payable to the Service Provider under this Agreement for the Change of Scope. After analysing the proposed “Monthly Fee/Payment” or “Fee” shall have the meaning set forth in Clause 13.1 modification received from the Service Provider for the Change of Scope within 15 days of receiving the notice, both Parties shall agree on the terms within 30 days of the Change of Scope Notice.



### ARTICLE 3: TERM OF AGREEMENT

#### 3.1 Term

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits and Good Industry Practice, the Authority hereby grants to the Service Provider and the Service Provider hereby accepts the exclusive right, license and authority to provision space, procure, install, commission and maintain the Equipment and provide the required Services at the locations per Schedule A of this Agreement, during the subsistence of this Agreement for a period of 7 (seven) years (or early termination by a Termination Notice in accordance with this Agreement) commencing from the Appointed Date (the “**Term**”), and to exercise and/or enjoy the rights, power, privileges and entitlements as set forth in this Agreement and implement the Project, subject to and in accordance with the terms and conditions set forth herein. The Contract may be extended by another 3 (three) years, if required by the Authority, based on mutually agreed terms and conditions between the Authority and Service Provider.

## **ARTICLE 4: CONDITIONS PRECEDENT**

- 4.1 Conditions Precedent
- 4.1.1 Save and except as expressly provided in this Agreement, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “Conditions Precedent”).
- 4.1.2 The Service Provider may, upon fulfilling the Conditions Precedent in Clause 4.1 require the Authority to satisfy any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 21 (twenty one) days of receiving of notice for Award of Contract.
- 4.1.3 The Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have issued to the Service Provider a notice to proceed (“NTP”) and provided only the “contractually required and need based” access and license rights with respect to the concerned Facilities at the locations listed in Schedule A of this Agreement, for the purpose of provisioning the space and Equipment and providing the required Services.
- 4.1.4 The Conditions Precedent required to be satisfied by the Service Provider shall be deemed to have been fulfilled when the Service Provider shall have provided Performance Security to the Authority;
- 4.1.5 Upon request in writing by any of the parties, the other party may, in its discretion, waive any of the Conditions Precedent set forth in this Article 4 or permit additional time to meet any of the Conditions Precedent set forth in this Article 4;
- 4.1.6 Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.
- 4.1.7 The date on which the Condition Precedents are satisfied by the Authority and Service Provider shall be the Appointed Date for commencement of Term for this specified Project.

## **ARTICLE 5: RIGHTS AND OBLIGATIONS OF THE SERVICE PROVIDER**

### **5.1 Obligations of the Service Provider**

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Service Provider shall at its cost and expense undertake to fulfil all the requirements of Scope of the Project, as per Article 2, and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Service Provider shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to Clauses 5.1.1 and 5.1.2, the Service Provider shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Service Provider hereby accepts and agrees to discharge obligations herein and provide the Services, subject to and in accordance with the terms and conditions set forth herein:
- 5.1.5 Subject to and in accordance with the provisions of this Agreement, the Service Provider shall be obliged or entitled (as the case may be) to:
- (a) Right of Way, “contractually required and need based” access and license rights to the Sites as listed in Schedule A of this Agreement for the purpose of and to the extent conferred by the provisions of this Agreement for performing and fulfilling all of the Service Provider’s obligations under this Agreement;
  - (b) Plan, procure, equip, install, commission, and maintain (and/or upgrade) the Equipment and provide Services as per the terms and conditions of this Agreement including any mentioned Specifications and Standards, Applicable Laws, Applicable Permits Performance Parameters and Good Industry Practice.
  - (c) Bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Service Provider under this Agreement;
  - (d) On and from the Commissioning Date and during the Term, the Service Provider shall have the right to demand, charge, retain, appropriate the ‘Monthly Fee/Payment’ in accordance with the provisions of this Agreement;
  - (e) Not assign, transfer or sublet or create any lien or Encumbrance on this Agreement, hereby granted or on the whole or any part of the Equipment nor transfer, lease or part possession thereof.
  - (f) Perform and fulfil all of the Service Provider's obligations in accordance with this Agreement including any mentioned Specifications and Standards, Applicable Laws, Applicable Permits and Good Industry Practice;
  - (g) Exercise such other rights and obligations as the Authority may determine as being necessary or desirable, for the purpose incidental and necessary for implementing the Project.

5.1.6 The Service Provider shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details, as may be required for obtaining all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
- (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated in the Project and in line with the scope of work detailed in Article 2;
- (c) maintain the Facility Infrastructure and Equipment as per service parameters defined in **Schedule C and other Maintenance and Remedial specific Articles of this Agreement;**
- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Service Provider's obligations under this Agreement;
- (f) not do or omit to do any act, deed or thing which may in any manner be in violation of any of the provisions of this Agreement;
- (g) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;  
and

## 5.2 Obligations relating to Project Agreements

5.2.1 It is expressly agreed that the Service Provider shall, at all times, be responsible and liable for all its obligations under this Agreement and no default under any agreement shall excuse the Service Provider from its obligations or liability hereunder.

## 5.3 Employment of foreign nationals

The Service Provider acknowledges, agrees and undertakes that employment of foreign personnel by the Service Provider and/or its Contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Service Provider and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Service Provider or any of its Contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Service Provider from the performance and discharge of its obligations and liabilities under this Agreement.

## 5.4 Employment of trained personnel

The Service Provider shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions. The minimum standards for persons employed in various positions shall be as set forth under **Schedule B** of this Agreement.

## **ARTICLE 6: OBLIGATIONS OF THE AUTHORITY**

### 6.1.1 Obligations of the Authority

6.1.2 The Authority shall, at its own cost and expense, undertake, comply with, and perform all its obligations set out in this Agreement or arising hereunder.

6.1.3 The Authority agrees to provide support to the Service Provider and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- (a) upon written request from the Service Provider, and subject to the Service Provider complying with Applicable Laws, provide all reasonable support and assistance to the Service Provider in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project;
- (b) undertake to coordinate with the concerned authorities and other departments to issue appropriate instructions to the field officers of these departments for making available required assistance and resources to the Service Provider towards the discharge of its obligations as per this Agreement;
- (c) not do or omit to do any act, deed or thing which may in any manner be in violation of any of the provisions of this Agreement;
- (d) support, cooperate with and discharge its obligations to facilitate the Service Provider in performing its obligations in accordance with the provisions of this Agreement; and
- (e) upon written request from the Service Provider and subject to the provisions of Clause 5.4, provide reasonable assistance to the Service Provider or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Service Provider or its Contractors their obligations under this Agreement and the Project Agreements.
- (f) ensure timely payments to the Service Provider in accordance with the provisions of this Agreement

## **ARTICLE 7: REPRESENTATIONS AND WARRANTIES**

### **7.1 Representations and Warranties of the Service Provider**

The Service Provider represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project and discharge obligations hereunder, in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid/RFP document (and including its Corrigendum/Addendum, where applicable) and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty; and
- (l) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Project or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith.

## 7.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Service Provider that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
- (f) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (g) it has complied with Applicable Laws in all material respects;
- (h) all information provided by it in the Bid Notice and invitation to bid in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;



- (i) upon the Service Provider submitting the Performance Security and performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Service Provider, in accordance with this Agreement.

### 7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

## **ARTICLE 8: DISCLAIMER**

### 8.1 Disclaimer

- 8.1.1 The Service Provider acknowledges that prior to the execution of this Agreement, the Service Provider has, after a complete and careful examination, made an independent evaluation of the Bid Notice, Scope of the Project, any mentioned Specifications and Standards, local conditions, and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 7.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Service Provider confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Service Provider acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Service Provider or any person claiming through or under any of them.

## ARTICLE 9: PERFORMANCE SECURITY

### 9.1 Performance Security

The successful bidder shall furnish within 21 days of receiving of Notice for Award of Contract a Performance Security in the form of an irrevocable and unconditional FDR/Bank Guarantee issued by a Nationalized Bank/Scheduled Bank in favour of the **State Health Society, Lucknow, Uttar Pradesh** for amount as specified below.

Cluster 1: Rs 2.70 crore  
Cluster 2: Rs 3.80 crore  
Cluster 3: Rs 2.70 crore  
Cluster 4: Rs 3.10 crore  
Cluster 5: Rs 2.30 crore

*If a bidder wins more than one cluster, the bidder will need to furnish as Performance Security an amount equal to the arithmetic sum of Performance Security for each cluster that the bidder has won.*

Until such time (i.e. within 21 days of receiving of Notice for Award of Contract) that the Performance Security is provided by the Service Provider pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Service Provider.

The Bank Guarantee shall be as per proforma at “**Schedule D**” and will remain in force up to and including 180 (One Hundred and Eighty) days after the end of contract. Failing the submission of Performance Security within 21 days of receiving of Notice for Award of Contract, the EMD may be forfeited and the Contract may be cancelled.

### 9.2 Appropriation of Performance Security

Upon occurrence of a Service Provider Default during the Term, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages/Liquidated Damages for such Service Provider Default. Upon such encashment and appropriation from the Performance Security, the Service Provider shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Service Provider shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 19. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Service Provider shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Service Provider Default, and in the event of the Service Provider not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages/Liquidated Damages, and to terminate this Agreement in accordance with Article 19.1.

### 9.3 Release of Performance Security

The Performance Security shall be released within 180 days, post expiry of the Term.

## ARTICLE 10: MAINTENANCE OF EQUIPMENT

### 10.1 Maintenance Obligations of the Service Provider

During the Term, the Service Provider shall conduct the Operations, Maintenance and Management of the CT Scan Facility and Equipment and provide services with skilled and unskilled manpower complying to AERB requirements, as per details of locations in Schedule A, in accordance with this Agreement and if required, modify, repair, replace or otherwise make improvements to the Equipment to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Good Industry Practice. The obligations of the Service Provider hereunder shall include:

- (a) providing round-the-clock response to emergencies/issues arising with respect to the performance of the Equipment, and also as per the Service and Operations & Maintenance Requirements defined in **Schedule C** of this Agreement during normal operating conditions;
- (b) preparing and submitting to the Authority, for its review and approval, a Maintenance Plan for the CT Scan Equipment and Facility Infrastructure, for carrying out periodic preventive maintenance and ensuring that the Equipment and CT Scan Facility Infrastructure remains in good working condition;
- (c) undertaking routine maintenance to ensure uninterrupted operation of the Equipment;
- (d) adhering to the guidelines issued by Government of Uttar Pradesh from time to time;
- (e) recruit and manage all human resources and bear all responsibilities and liabilities (including towards salaries) as per Applicable Law in India;
- (f) procuring and maintaining adequate inventory of all spares. The Service Provider shall procure only the best quality spares, which would be subjected to periodic inspection by the representatives of the Authority. For avoidance of doubt, please note that there shall be no payment by the Authority for procurement of spares.
- (g) Abiding by the existing policies/ applicable statutory guidelines of the Authority and undertake all statutory responsibilities;
- (h) ensuring that the staff of the Project is adequately trained in relation to the safe handling of Equipment during the Term (also detailed in Article 2.1.1.7);
- (i) carrying out any up-gradation in relation to the installed and commissioned Equipment and replacement of Defect in any Equipment, if required and as specified in Schedule C of this Agreement, during the Term;
- (j) Maintenance of all communication, control and administrative systems necessary for the efficient functioning and maintenance of the Equipment;
- (k) complying with Safety Requirements in accordance with Article 11.1.

### 10.2 Damages for breach

10.2.1 Save and except as otherwise expressly provided in this Agreement including those in Schedule C, in the event that the Service Provider fails to repair or rectify any Defect with respect to the Equipment /Services, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages/Liquidated Damages, to be calculated and paid as per **Clause 10 under Schedule C**. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof. For avoidance of doubt, it is clarified that the provisions of Clause 10.2.1 shall not be applicable for any Defect expressly specified in

Schedule C of this Agreement.

10.2.2 The Service Provider shall pay such Damages/Liquidated Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

10.3 Authority's right to take remedial measures

10.3.1 In the event the Service Provider does not maintain and/or repair the Equipment in conformity with this Agreement or does not repair or rectify any Defect/Issue with respect to the Equipment /Services, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the Inspection Report or a notice in this behalf from the Authority, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Service Provider, and to recover the actual cost incurred in remedying the Defect from the Service Provider. In addition to recovery of the aforesaid cost, a sum as calculated per provisions of Clause 10 under Schedule C shall be paid by the Service Provider to the Authority as Damages/Liquidated Damages.

10.3.2 The Authority shall have the right, and the Service Provider hereby expressly grants to the Authority the right to recover the costs and Damages specified in Clause 10.3.1 directly from the Performance Security.

10.4 Overriding powers of the Authority

10.4.1 If in the reasonable opinion of the Authority, the Service Provider is in material breach of its obligations under this Agreement and, in particular, the Service and Operations & Maintenance Requirements (Schedule C), and such breach is causing or likely to cause the Equipment and related Services not being available to the Project for use, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Service Provider to take reasonable measures immediately for rectifying the Defect with respect to the specific Equipment and/or remedy the breach of the obligation, as the case may be.

10.4.2 In the event that the Service Provider, upon notice under Clause 10.4.1, fails to rectify or remove the Defect in the Equipment within a reasonable period, the Authority may exercise overriding powers under this Clause 10.4.2 and take over the performance of any or all the obligations of the Service Provider to the extent deemed necessary by it for rectifying or removing such Defect; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations shall be entitled to recover them from the Service Provider in accordance with the provisions of Clause 10.7 along with the Damages/Liquidated Damages specified therein.

10.4.3 In the event of a national emergency, civil commotion or any other act specified in Clause 17.3, the Authority may take over the performance of any or all the obligations of the Service Provider to the extent deemed necessary by it or as directed by the Authority, and give such directions to the Service Provider as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the

provisions of Article 17.1 (Force Majeure).

10.5 Restoration of loss or damage to Equipment

Save and except as otherwise expressly provided in this Agreement, in the event that the Equipment or any part thereof suffers any loss or damage during the Term from any cause whatsoever, the Service Provider shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Equipment conforms to the provisions of this Agreement.

10.6 Excuse from performance of obligations

The Service Provider shall not be considered in breach of its obligations under this Agreement if any part of the Equipment is not available for use by any of its CT Scan Facilities on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) compliance with a request from the Authority or the directions of any Government Instrumentality.

10.7 Advertising on Equipment

The Service Provider shall not display any form of commercial advertising on the Equipment at the CT Scan Facility during the Term.

10.8 Technology watch

10.8.1 The Service Provider may implement at its own cost, a software technology watch throughout the Term so as to allow the Project to benefit from technical advancement and/or technology upgrades in connection with the Equipment and its Services.

10.8.2 In the event that any Party believes that the replacement and/or upgrade of any Equipment or its software is likely to have a positive impact on the quality of the Services or the cost of performing the Services, the Service Provider shall submit either on its own initiative or within 30 days of the Authority's request for the same, a written memorandum justifying the reasons for its actions or proposed actions or otherwise.

## **ARTICLE 11: SAFETY REQUIREMENTS**

### **11.1 Safety Requirements**

11.1.1 The Service Provider shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Premise/Space, deployed staff of Service Provider and Equipment at the Facilities. In particular, the Service Provider shall comply with the safety requirements prescribed by AERB Guidelines.

11.1.2 The Authority reserves the right to appoint an experienced and qualified firm or organisation (the “Safety Consultant”) for carrying out safety audit of the Premises/Space, deployed staff of Service Provider and Equipment in accordance with the Safety Requirements, and take all other actions necessary for securing compliance with the Safety Requirements.

### **11.2 Expenditure on Safety Requirements**

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Service Provider to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Article 10. Costs and expenses on works and services not covered hitherto before and arising out of Safety Requirements shall be borne by the Authority.

## **ARTICLE 12: MONITORING OF EQUIPMENT AND SERVICES**

### **12.1 Annual Performance Review**

An Annual Performance Review shall be carried out by the Authority based upon the feedback from CMO and Patients for the quality of services at respective facilities. The basis of the performance review for a Facility would be the working condition of equipment (CT Scan Machine and Associated Equipment, Lifesaving and Monitoring Equipment), availability of Human Resources and patient satisfaction. The report of this Annual Performance Review will be used as a circular of suggestive measures for Service Provider.

During the Term, the Service Provider shall also submit a half yearly report of clinical audit done by a third party or as nominated by the Authority.

### **12.2 Inspection of Services**

The Authority shall during the Term of this Agreement have a right to organize periodic inspections at any given Facility with respect to the Equipment and Services provided by the Service Provider and provide feedback on its performance/condition. The Authority shall be entitled to make a report of such inspection (the "Inspection Report") stating in reasonable detail the issues, if any, and send a copy thereof to the Service Provider and/or to related Stakeholders of the Project working with or supporting the Authority.

### **12.3 Remedial measures**

12.3.1 The Service Provider shall repair or rectify the Defects, if any, as set forth in Schedule C of this Agreement.

12.3.2 In the event that remedial measures are not completed by the Service Provider in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Liquidated Damages/Damages from the Service Provider under and in accordance with the provisions of Article 10.22.



## **ARTICLE 13: PERIODICITY AND METHODOLOGY OF PAYMENT**

### 13.1 Payment Terms

13.1.1 The Director General Medical and Health, Department of Medical Health & Family Welfare, Government of Uttar Pradesh will be the paying authority. CMS will verify the payment claims / invoices of the Service Provider.

1. The Service Provider will submit the invoice on monthly basis.
2. The Service Provider can submit the verification claims duly accompanied by evidences of services provided, on fortnightly basis to CMS for verification purpose.
3. For every fortnightly verification, CMS can raise objection within 7 days of receipt and on 8th day the verification claim will be considered approved; in case no objection is raised by CMS.
4. In case of objection raised by CMS, the same will be resolved through the Log Book at the facility and referring Healthcare Facility office.
5. 100% Payment will be made as per Invoice supported by Free Fee Receipts mentioning Patient Name with Authority decided ID and Referral Doctor and Verified by the CMS.
6. Invoice Value will be as generated by the CT Scan Monitoring System MIS.
7. After verification of invoices / claims by CMS, the Authority will make the payment within 30 days of verification of the Invoices or after 30 days of resolution of dispute, whichever is later, for all invoices raised.
8. The payment will be subject to all Statutory Taxes, Tax Deducted at Source (TDS), as per Applicable taxes and laws.

13.1.2 The Service Provider hereby acknowledges and agrees that it is not entitled to any revision of the Payment Terms or other relief from the Authority except in accordance with the express provisions of this Agreement.

### 13.2 Penalty due to non-conformance to the Service and Operations & Maintenance Requirements.

13.2.1 The Authority would be entitled to deduct amount due to the Service Provider for any year of the Term of this Agreement, as per Schedule C, if the Service Provider fails to meet during the previous year, the Service and Operations & Maintenance Requirements set out in this Agreement (with performance specific parameters under Schedule C).

**ARTICLE 14: REPLACEMENT OF FAULTY OR WORN-OUT EQUIPMENTS**

- 14.1. Without prejudice to the Service Provider's obligation to remedy and remove Defects with respect to the Equipment under this Agreement, the Service Provider shall be obliged to replace any and all Equipment(s) which get worn out and need to be replaced during the Term, at its own expense.
- 14.2. In the event that the Service Provider fails to replace the worn out Equipment, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid as per **Article 10.2**. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.
- 14.3. The Service Provider shall pay such Damages forthwith and in the event it contests such Damages, the Dispute Resolution Procedure shall apply.

## **ARTICLE 15: INSURANCE**

### **15.1 Insurance during Term**

The Service Provider shall effect and maintain at its own cost, during the Term, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the “Insurance Cover”). The Service Provider shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of an act by the Service Provider or omission by any Third Party during the Term.

### **15.2 Notice to the Authority**

Not later than 30 (thirty) days prior to commencement of the Term, the Service Provider shall by notice, if requested by the Authority, furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 15. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Service Provider to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

### **15.3 Evidence of Insurance Cover**

All insurances obtained by the Service Provider in accordance with this Article 15 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Service Provider shall furnish to the Authority, if so requested by the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Service Provider to the Authority.

### **15.4 Remedy for failure to insure**

If the Service Provider shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Service Provider, or in the event of computation of any payments made at the time of termination, treat an amount equal to the Insurance Cover as deemed to have been received by the Service Provider.

### **15.5 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Service Provider pursuant to this Article 15 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

15.6 Service Provider's waiver

The Service Provider hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Service Provider may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Service Provider pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

15.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Service Provider and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Equipment at the Locations detailed in Schedule A.

**ARTICLE 16: ACCOUNTS AND AUDIT**

16.1 Audited accounts

- 16.1.1 The Service Provider shall maintain books of accounts recording all its receipts, income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits with respect the Services provided under this Agreement.
- 16.1.2 The Authority shall have the right to inspect the records of the Service Provider during office hours and request for copies of relevant extracts of books of accounts as per Applicable Laws.
- 16.1.3 All receipts shall be subjected to a third party annual audit and the audit report submitted as part of annual work report of the Service Provider for that facility. The Annual Audit will be carried by a Committee formed by the Authority consisting of members from Finance, Procurement and a Radiologist. The Service Provider will be asked to explain the deficiencies and if the reply is not satisfactory the Service Provider may be penalized for the deficiencies. The amount of penalty will be decided by the Committee and will not exceed the Performance Guarantee amount.
- 16.1.4 In case the Authority discovers that any overpayment has been made to the Service Provider, the Authority shall be entitled to seek adjustment/reimbursement of such overpayments from the Monthly Fee/Payment due for the next month in which audit or inspection was conducted.

## **ARTICLE 17: FORCE MAJEURE**

### 17.1 Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 17.2, 17.3 and 17.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

### 17.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion;
- (b) strikes or boycotts or arson or theft (other than those involving the Service Provider, its Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Facilities or District Hospital for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 17.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory Authority made against the Service Provider in any proceedings for reasons other than (i) failure of the Service Provider to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

### 17.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Contractor;

- (d) any Indirect Political Event that causes a Non-Political Event; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

#### 17.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) compulsory acquisition in national interest or expropriation of rights of the Service Provider;
- (b) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Service Provider to perform its obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Service Provider's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (c) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Contractor; or
- (d) any event or circumstance of a nature analogous to any of the foregoing.

#### 17.5 Duty to report Force Majeure Event

17.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 17 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

17.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

17.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 17.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

17.6 Effect of Force Majeure Event on the Agreement

17.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the Conditions Precedent Period as set forth in Article 4 shall be extended by a period equal in length to the duration of the Force Majeure Event.

17.6.2 At any time after the Commissioning Date, if any Force Majeure Event occurs whereupon the Service Provider is unable to provide the Services during the period for which Force Majeure exists, no payment shall be made by the Authority to the Service Provider for the days on which the Equipment is not made available by the Service Provider and appropriate deductions shall be made by the Authority at the time of settling the amounts due towards the Monthly Fee/Payment. However, the Service Provider shall not be liable to pay any damages to the Authority in case it is unable to provide the Services on account of any Force Majeure Event.

17.7 Allocation of costs arising out of Force Majeure

17.7.1 Upon occurrence of any Force Majeure Event prior to the Commissioning Date and during the Term, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

17.7.2 Save and except as expressly provided in this Article 17, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

17.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for more than a continuous period of 90 (ninety) days or for a total/cumulative time period of more than 360 (three hundred and sixty) days during the Term, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 17, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

17.9 Termination Payment for Force Majeure Event

17.9.1 If Termination is on account of any of the Force Majeure Events, the Authority shall return the Performance Security to the Service Provider. The Service Provider shall take appropriate insurance cover for hedging risks associated with the events of Force Majeure.

17.10 Dispute resolution



In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

17.11 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

## **ARTICLE 18: SUSPENSION OF SERVICE PROVIDER RIGHTS**

### 18.1 Suspension upon Service Provider Default

Upon occurrence of a Service Provider Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Service Provider under this Agreement including the Service Provider's right to receive Monthly Fee/Payment for a specified period, and (ii) exercise such rights itself or authorise any other person to exercise the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Service Provider and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice; provided that upon written request from the Service Provider and the Lenders' Representative, the Authority shall extend the aforesaid period of 90 (ninety) days by a further period not exceeding 60 (sixty) days.

### 18.2 Authority to act on behalf of Service Provider

18.2.1 During the period of Suspension, the Authority shall not be obliged to pay any Monthly Fee/Payment to the Service Provider.

18.2.2 During the period of Suspension hereunder, all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Service Provider under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Service Provider and the Service Provider undertakes to indemnify the Authority for all costs incurred during such period.

### 18.3 Revocation of Suspension

18.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 45 (forty five) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Service Provider under this Agreement.

18.3.2 Upon the Service Provider having cured the Service Provider Default within a period not exceeding 45 (forty five) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Service Provider under this Agreement.

### 18.4 Termination

18.4.1 At any time during the period of Suspension under this Article 18, the Service Provider may by notice require the Authority to revoke the Suspension and elect to issue a Termination Notice. The Authority shall within 15 (fifteen) days of receipt of such Termination Notice, terminate this Agreement in accordance with Article 19.

18.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 18.1, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence

of a Service Provider Default.

## ARTICLE 19: TERMINATION

### 19.1 Termination for Service Provider Default

#### 19.1.1 The Authority may terminate the contract under following circumstances:

If the successful Bidder withdraws its Bid after its acceptance or fails to submit the required Performance Securities for the initial contract and or fails to fulfil any other contractual obligations. In that event, the Authority will have the right to purchase the services from next eligible bidder and the extra expenditure on this account shall be recoverable from the defaulter. The Earnest Money and the Performance Security deposited by the defaulter shall also be recovered to pay the balance amount of extra expenditure incurred by the Authority.

The following conditions will be treated as failure to fulfil the key contractual obligation:

1. Failure to follow Standard Operating Procedures (SOPs) for performing the tests.
2. Non-compliance of minimum essential standards for CT Scan Centers.
3. Criminal Indictment and excess and/or forged billing to the Authority
4. Insolvency
5. Failure to commence the services even after breaching the maximum Liquidated Damages which is equal to the performance security amount

The Service Provider will be served a notice of termination by the Authority and will be require to rectify within 30 days failing which the services will be treated as Terminated.

#### 19.1.2 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Service Provider fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 30 (thirty) days, the Service Provider shall be deemed to be in default of this Agreement (a "Service Provider Default"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Service Provider fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Service Provider fails to cure, within a Cure Period of 30 (thirty) days, the Service Provider Default for which whole or part of the Performance Security was appropriated;
- (c) the Service Provider is in material breach of its obligations as laid down in this Agreement with respect to any location as mentioned under Schedule A;
- (d) the Service Provider abandons or manifests intention to abandon the maintenance of the Equipment without the prior written consent of the Authority;
- (e) the Service Provider is in breach of the Maintenance Requirements;
- (f) a breach of any of the Project Agreements by the Service Provider has caused a

Material Adverse Effect;

- (g) the Service Provider creates any Encumbrance in breach of this Agreement;
- (h) the Service Provider repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (i) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Service Provider under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Service Provider, and such transfer causes a Material Adverse Effect;
- (j) an execution levied on any of the assets of the Service Provider has caused a Material Adverse Effect;
- (k) the Service Provider is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Service Provider or for the whole or material part of its assets that has a material bearing on the Project;
- (l) the Service Provider has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (m) a resolution for winding up of the Service Provider is passed, or any petition for winding up of the Service Provider is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Service Provider is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Service Provider are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Service Provider under this Agreement and the Project Agreements; and provided that:
  - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Service Provider as at the Appointed Date; and
  - (iii) each of the Project Agreements remains in full force and effect;
- (n) any representation or warranty of the Service Provider herein contained which is, as of the date hereof, found to be materially false or the Service Provider is at any time hereafter found to be in breach thereof;
- (o) the Service Provider submits to the Authority any statement which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

- (p) the Service Provider has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (q) the Service Provider commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Authority.

19.1.3 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Service Provider Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Service Provider with respect to the specific Cluster/Facility/DH forming part of the Project; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Service Provider of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Service Provider to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of clause 19.1.3.

19.1.4 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 19.1.2 to inform the Lenders' Representative

## 19.2 Termination for Authority Default

19.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 30 (thirty) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "Authority Default") unless the default has occurred as a result of any breach of this Agreement by the Service Provider or due to Force Majeure. The defaults referred to herein shall include:

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Service Provider;
- (b) the Authority has failed to make any payment to the Service Provider within the period specified in this Agreement;
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or

19.2.2 Without prejudice to any other right or remedy which the Service Provider may have under this Agreement, upon occurrence of an Authority Default, the Service Provider shall, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Service Provider shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

## 19.3 Termination Payment – Event of Default

19.3.1 Upon Termination on account of a Service Provider Default during the Term, no payments related to termination shall be due or payable to the Service Provider. The Authority shall

be entitled to forfeit the Performance Security of the Service Provider and terminate this Agreement, as per the provisions detailed out in this Agreement.

19.3.2 Upon Termination on account of Authority Default, the Authority shall return back the Performance Security to the Service Provider.

19.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Equipment forthwith;
- (b) be entitled to restrain the Service Provider and any person claiming through or under the Service Provider from entering upon the District Hospital or any Authority controlled part of the Project;
- (c) all sums claimed by any Contractor(s) as being due and owing for services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Service Provider and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

19.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

## **ARTICLE 20: SERVICE CONTINUITY REQUIREMENTS**

### 20.1 Service Continuity

Notwithstanding Article 19, upon Termination, the Service Provider shall comply with and conform to the following:

- (a) submit to the Authority, a plan outlining the handover procedures, training of authority staff and plan for management of human resources (the “**Service Continuity Plan**”); and
- (b) the Service Provider shall continue discharge of obligations for a period of 90 (ninety) days from the date of Termination of this Agreement (the “**Service Continuity**”);



## **ARTICLE 21: DEFECTS LIABILITY AND ASSIGNMENT**

### 21.1 Liability for defects

The Service Provider shall be responsible for remedying and removing all Defects with respect to the Equipment during the Term and for a period of 90 (ninety) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all Defects observed by the Authority in the Equipment during the aforesaid period. In the event that the Service Provider fails to repair or rectify such Defect within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Service Provider's risk and cost so as to make the Equipment conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Service Provider to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Performance Security.

### 21.2 Assignment and Charges

#### 21.2.1 Restrictions on assignment and charges

- (a) This Agreement shall not be assigned by the Service Provider to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- (b) The Service Provider shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Service Provider is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- (c) The Service Provider shall not mortgage/pledge/hypothecate any Equipment except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

#### 21.2.2 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Service Provider, assign any of its rights and benefits and/or obligations under this Agreement; to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

**ARTICLE 22: CHANGE IN LAW**

22.1 Change in Cost for Service Provider

If, as a result of Change in Law (confined to Applicable Law), the Service Provider incurs an increase in costs or reduction in net after-tax return or other financial burden, the Authority shall not be able to revise any Payment Terms of this Contract Agreement because of the same.

## ARTICLE 23: INDEMNITY

### 23.1 General indemnity

23.1.1 The Service Provider will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Authority Instrumentalities and Authority owned and/or controlled entities/enterprises, including the Authority (“the Indemnified Persons”) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Service Provider of any of its obligations under this Agreement or any related agreement or on account of any Defect in the provision of services by the Service Provider, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Indemnified Persons.

23.1.2 The Authority will indemnify, defend, save and hold harmless the Service Provider against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Service Provider of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Service Provider, its subsidiaries, affiliates, Contractors, servants or agents, the same shall be the liability of the Service Provider.

### 23.2 Indemnity by the Service Provider

23.2.1 Without limiting the generality of Clause 23.1, the Service Provider shall fully indemnify, hold harmless and defend the Authority and the Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Service Provider to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Service Provider in respect of the income or other taxes of the Service Provider’s Contractors and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Service Provider or any of its Contractors which are payable by the Service Provider or any of its Contractors.

23.2.2 Without limiting the generality of the provisions of this Article 23, the Service Provider shall fully indemnify, hold harmless and defend the Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Service Provider or its Contractors in performing the Service Provider’s obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Service Provider shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or

suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Equipment, or use of any part thereof, is held to constitute an infringement of any third party's intellectual property rights and its use is permanently enjoined, the Service Provider shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the Equipment. If the Service Provider is unable to secure such licence within a reasonable time, the Service Provider shall, at its own expense, either replace the impacted Equipment thereof with non-infringing Equipment, or modify the same so that it no longer infringes the said intellectual property rights.

### 23.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 23 (the "Indemnified Party") it shall notify the other Party (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### 23.4 Defence of claims

23.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 23, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

23.4.2 If the Indemnifying Party has exercised its rights under Clause 23.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

23.4.3 If the Indemnifying Party exercises its rights under Clause 23.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 23.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

#### 23.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 23, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

#### 23.6 Survival on Termination

The provisions of this Article 23 shall survive Termination.

## **ARTICLE 24: ACCESS RIGHTS OF SERVICE PROVIDER**

### 24.1 License rights

24.1.1 For the purpose of this Agreement and the covenants and warranties on the part of the Service Provider herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Service Provider, commencing from the Appointed Date, a “contractually required and need based” licence to access the premises of a specified District Hospital (the “Licensed Premises”) to submit required CT Scan documentation/images at the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Term and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

24.1.2 It is expressly agreed that the rights granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Agreement, upon the Termination of this Agreement for any reason whatsoever.

24.1.3 The Service Provider hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Service Provider a transfer or surrender of the License granted hereunder at any time after the Term has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Service Provider consents to it being registered for this purpose.

### 24.2 Restriction on sub-licensing

The Service Provider shall not sublicense its rights hereunder, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Service Provider to appoint Contractors for the performance of its obligations hereunder including for maintenance of all or any part of the Equipment.

## ARTICLE 25: DISPUTE RESOLUTION

### 25.1 Dispute resolution

25.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 25.2.

25.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

### 25.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Authority to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Authority, either Party may require such Dispute to be referred to the Authority and the Chairman of the Board of Directors of the Service Provider for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 24.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 25.3.

### 25.3 Arbitration

25.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 25.2, shall be finally decided by reference to arbitration in accordance with Clause 25.3.2. Such arbitration shall be held in accordance with the provisions of the Arbitration Act. The venue of such arbitration shall be Lucknow, and the language of arbitration proceedings shall be English.

25.3.2 Each Party shall appoint one arbitrator and the two appointed arbitrators shall appoint a third arbitrator in accordance with the Arbitration Act.

25.3.3 The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 25 shall be final and binding on the Parties as from the date it is made, and the Service Provider and the Authority agree and undertake to carry out such Award without delay.

25.3.4 The Service Provider and the Authority agree that an Award may be enforced against the Service Provider and/or the Authority, as the case may be, and their respective assets wherever situated.

25.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

## **ARTICLE 26: MISCELLANEOUS**

### 26.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and subject to Clause 25.3, the courts at Lucknow, Uttar Pradesh shall have jurisdiction over matters arising out of or relating to this Agreement.

### 26.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

### 26.3 Depreciation

For the purposes of depreciation under the Applicable Laws, the Equipment representing the capital investment made by the Service Provider in the Project shall be owned by the Service Provider. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Service Provider under the Applicable Laws.

### 26.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 45 (forty five) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, save and except otherwise expressly provided in this Agreement, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 1% (one per cent) per month of delay, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.



26.5 Waiver

26.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement :-

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

26.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

26.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority of any Project Agreement, Document, Design or Drawing submitted by the Service Provider nor any observation or inspection of the operation or maintenance of the Equipment nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Service Provider from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Service Provider by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

26.7 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

26.8 Survival

26.8.1 Termination shall:

- (a) not relieve the Service Provider or the Authority as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or

liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

#### 26.9 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

#### 26.10 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

#### 26.11 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or Authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

#### 26.12 Third Parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

#### 26.13 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

#### 26.14 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Service Provider, be given by facsimile and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Service Provider may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile to the number as the Service Provider may from time to time designate by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Service Provider; provided that if the Service Provider does not have an office in Delhi it may send such notice by facsimile and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered.

#### 26.15 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

#### 26.16 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND

DELIVERED

For and on behalf of AUTHORITY by:

Signature)  
(Name)  
(Designation)

SIGNED, SEALED AND

DELIVERED

For and on behalf of SERVICE PROVIDER by:

Signature)  
(Name)  
(Designation)

In the presence of

1.

2.

**SCHEDULE A: NAMES OF DISTRICTS WHERE CT SCAN FACILITIES AND SERVICES  
NEED TO BE PROVIDED**

Cluster	S. No.	Name of Districts	No. of Outpatients (2015) at DHs	No. of Inpatients (2015) at DHs	
<b>1</b>	1	Mathura	1,249,114	78,374	
	2	Aligarh	1,446,122	81,011	
	3	Etah	791,467	37,729	
	4	Hathras	2,049,860	94,836	
	5	Kasganj	606,209	22,970	
	6	Auraiya	626,589	39,006	
	7	Farrukhabad	789,969	46,232	
<b>2</b>	8	Badaun	1,098,287	60,035	
	9	Baghpat	1,515,042	65,291	
	10	Gautam Budha Nagar (Noida)	1,571,792	45,021	
	11	Hapur	649,121	36,868	
	12	Amroha	1,543,565	44,995	
	13	Bijnor	1,342,874	57,626	
	14	Rampur	1,541,005	114,920	
	15	Sambhal	613,284	26,173	
	16	Muzzaffarnagar	1,321,758	123,446	
	17	Shamli	591,803	38,306	
<b>3</b>	18	Kaushambi	846,972	65,869	
	19	Chitrakoot	720,159	47,685	
	20	Hamirpur	1,060,653	69,411	
	21	Mahoba	930,031	84,965	
	22	Bhadohi	901,005	44,771	
	23	Chandauli	1,418,966	92,629	
	24	Ghazipur	717,739	52,659	
	<b>4</b>	25	Mau	1,499,007	73,238
26		Sant Kabir Nagar	695,826	39,481	
27		Siddharthnagar	839,079	48,022	
28		Ambedkar Nagar	1,185,946	47,779	
29		Amethi	481,403	16,769	
30		Deoria	1,140,378	95,247	
31		Kushinagar	1,099,121	64,798	
32		Maharajganj	1,405,307	67,094	
<b>5</b>		33	Pilibhit	1,321,518	79,504
		34	Shahjahanpur	1,090,247	78,634
	35	Balrampur	1,168,279	64,763	
	36	Shravasti	469,367	34,035	
	37	Lakhimpur Kheri	2,892,110	121,179	
	38	Sitapur	1,518,450	156,374	

### SCHEDULE B: KEY PERSONNEL OF SERVICE PROVIDER

The human resources including radiologist, radiation safety officer, radiographer and staff nurses for the CT scan facility shall be sole responsibility of the Service Provider. Service Provider shall provide the signed report from qualified Radiologists having a Post Graduate Degree/Post Graduate Diploma in Radiology and imaging. Service Provider shall deploy adequately trained Radiologists, Radiographers and Paramedical staff to run the facility during its specified operational hours (per Clause 2.1.1.3). The Service Provider should ensure that an Anesthesiologist is available on call basis at each center, in case any need arises.

The staffing qualification and experience should be in line with the **Medical Imaging Services (Diagnostic Centers) - Standard No. CEA/MIS-028 as applicable to CT Scan Services**, which is mentioned below:

S. No.	Resource / Staff	Qualification	Remarks
1.	Radiologist	MCI recognized MD (Radiology)/DNB (Radiology)/DMRD	<ul style="list-style-type: none"> <li>• All reports must be signed by the Radiologist within TAT.</li> <li>• A single radiologist should not be responsible for more than one Cluster.</li> </ul>
2.	Anesthesiologist	MCI recognized MD (Anaesthesiology) / MS (Anaesthesia)	Must be available on call basis at each center
3.	Radiation Safety Officer	RSO Level III	Safety requirements as per AERB guidelines should be followed.
4.	Radiographers/ Technicians	CT technician course from a recognized institute.	At least One Radiographers/ Technicians, One Staff Nurse and One Receptionist/Helper during the specified operational hours of the center (per Clause 2.1.1.3)
5.	Staff Nurse	GNM	
6.	Receptionist/Helper	10+2 pass	

The Service Provider should have at least one Radiographer/ Technician, one Staff Nurse and One Receptionist/Helper during the specified operational hours of the center (per Clause 2.1.1.3). The Service Provider should ensure that an Anesthesiologist is available on call basis at each center, in case any need arises.

## **SCHEDULE C: SERVICE AND OPERATIONS & MAINTENANCE REQUIREMENTS**

1. Service Provider will have to provide documentary evidence that its CT Scan machine had been installed new or had been installed less than three years ago. Service Provider has to submit the Installation report with their technical specification, catalogue, AMC /CMC report etc.
2. **Commissioning of services and Liquidated Damages:** The Service Provider shall commission the CT Scan Facilities for the cluster in three phases applicable from the day of signing of the contract by both parties.
  - (a) Phase 1: Commissioning of 3 CT Scan Facilities in the cluster within 60 days from the day of signing of the contract by both parties.
  - (b) Phase 2: Commissioning of Remaining 50% CT Scan Facilities in the cluster within 120 days from the day of signing of the contract by both parties.
  - (c) Phase 3: Commissioning of Remainder of CT Scan Facilities in the cluster within 180 days from the day of signing of the contract by both parties.

In case of extension / renewal of the contract with the same Service Provider for an additional term, this time period shall not be valid. The Liquidated Damage for non-commencement of services for each phase will be applicable at the rate of **Rs. 10,000 per day** per District. This will be recoverable from the Performance Security, and up to a maximum of 5% of the signed contract value (Maximum Value). Upon reaching the Maximum Value, this contract will be terminated as per Termination Procedure laid down under this Agreement.

3. **Software Up-gradation, Technology Up gradation and replacement of CT Tube:** The machine shall be suitably upgraded by the Service Provider under following conditions:
  - (a) Review by a board appointed by Authority upon assessing the need for a software up-gradation. Such reviews should not be made in less than one year but should be made midway of the contract and before renewal of the contract.
  - (b) If the Service Provider understands the requirement of the technology up-gradation for the best interest of the contract, then Service Provider can request for such technology up-gradation from the Authority and execute the up-gradation of the technology at its cost and based upon mutual consent.
  - (c) Upon declaration of any national or international guideline accepted by the Government prohibiting the use of earlier (currently installed) technology.
  - (d) The CT Tube has completed the required number of procedures as specified in the brochure of the CT Tube.
4. The Service Provider shall provide round the clock security services for the CT scan facility at its own cost for the entire period of contract.
5. The Service Provider shall provide a computer, with connection to the server, software to view the diagnosed images and its requisite peripherals at the District Hospital at its own cost. It will install a Medical Grade Monitor to View the Images and Reports.
6. Service Provider shall handover the softcopy of the images for MLC cases to the authority as per agreement with the state. Legal responsibility of correct reporting of images lies with the Service Provider.

7. The CT scan machine provided must be AERB type approved and it is the responsibility of the Service Provider to modify room layout of the installation site as per AERB guidelines and get license from AERB to run this CT scan machine. It is the responsibility of the Service Provider to employ Radiation Safety Officer (RSO) for every CT scan machine under their operation.
8. Service Provider shall ensure best quality of tests and protocols and shall submit a half yearly report of clinical audit done by a third party or as nominated by the authority.
9. An Annual Performance Review shall be carried out by the Authority based upon the feedback from CMO and Patients for the quality of services at respective facilities. The basis of the performance review for a Facility would be the working condition of equipment (CT Scan Machine and Associated Equipment, Lifesaving and Monitoring Equipment), availability of Human Resources and patient satisfaction. The report of this Annual Performance Review will be used as a circular of suggestive measures for Service Provider.
10. The Service Provider will have to maintain an uptime of 335 days in a year with maximum 12 days of downtime at a stretch and a total of 30 days in a year. The penalty would be levied basis the following two parameters i) Downtime, ii) TAT (Turn Around Time)

**10.1 Downtime Penalty:**

The provider shall pay a sum equivalent to contracted cost per CT Scan (Head Non Contrast) multiplied by the total number of CT Scans done per day during the previous month multiplied by number of downtime days as penalty in the following cases:

- (a) If the machine is down for more than 30 days in a year, for each additional day of CT Scanner not in operation.
- (b) In case the machine is out of order for 72 hours and Service Provider has not made any alternative arrangements, then for each additional days beyond 72 hours of CT Scanner not in operation.
- (c) If shutdown extends beyond 12 days due to technical and/or administrative reasons on the part of Service Provider, the contract may be cancelled.

**10.2 TAT Penalty:**

- (a) 50% penalty should be deducted from next month's payment for cases where TAT was beyond specified limits.
- (b) On a case by case basis, in order to address delays in submission of reports due to Internet Connectivity Issues, an additional margin of 10% might be provided for cases of such delays upto a maximum of 72 hours in a particular month.

11. The Paying Authority shall not pay the Service Provider any charges for any repeat tests resulting out of imaging errors. In case there is a requirement for Contrast CT after Plain CT scan has been performed, and this requirement has been confirmed by the Radiology Department at the District Hospital, then the Contrast CT scan shall be counted as a separate scan.
12. The following records shall be maintained on a daily basis by the Service Provider.
  - (a) Daily patients register, recording details of patients' visits (patient name, address, contact number, in-time, services needed, and waiting time) for outside patients as well



as for patients referred by District Hospital to be maintained. This logbook can be referred by Authority to audit the operations and investigate disputes, if any.

(b) Daily report delivered register of referred patients for CMS verification.

(c) Log book for record of any breakdown/shut down of the machine/facility.

13. The Service Provider may refer the test to another center in case of breakdown/shutdown ensuring all other conditions pertaining such as services, reports, records, patient transport and safety of processes and procedures in the referred center.

14. The Service Provider shall take a third party insurance policy to cover the patients sent by the District Hospital against any mishap, inside the C.T. Scan facility and for consequences arising due to reporting error. Conforming to the provision of the consumer protection act shall be the sole and absolute responsibility/ liability of the Service Provider.

**SCHEDULE D: FORMAT OF PERFORMANCE SECURITY**

Dated [●]

Authority

.....  
.....  
.....  
.....

Dear Sir,

1. We understand that [●], (the “Service Provider”) has entered into a Service Agreement dated [●](the “**Agreement**”), with the Authority, whereby the Service Provider has undertaken to provide the Services, subject to and in accordance with provisions of the Agreement.
2. The Agreement requires the Service Provider to furnish a Performance Security to the Authority in a sum of Rs. [●] (Rupees [●] Lakh) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Term as per the provisions of the Agreement.
3. We [●], through our Branch at [●] (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Service Provider’s obligations during the Term, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Service Provider, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer duly authorized by the Authority, that the Service Provider has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Service Provider is in default in due and faithful performance of its obligations during the Term under the Agreement and its decision that the Service Provider is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Service Provider, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Service Provider for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Service Provider and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall

not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Service Provider before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Service Provider contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Service Provider, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Service Provider or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Service Provider under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect till the subsistence of the Agreement and provided the Service Provider is not in breach of this Agreement. On successful completion of Term and upon request made by the Service Provider for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Service Provider, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be

deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of [●] years or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this .... Day of ..... 2016

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK

by:

Signature:

Name:

Designation:

Address: